

Order

Michigan Supreme Court
Lansing, Michigan

April 8, 2009

Marilyn Kelly,
Chief Justice

137749

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

RICHARD R. ROBERTS and STACEY D.
ROBERTS,

Plaintiffs-Appellants,

v

SC: 137749
COA: 275458
Leelanau CC: 05-007063-CK

ROBERT L. SAFFELL and JOANNE O.
SAFFELL,

Defendants-Appellees.

On order of the Court, the application for leave to appeal the August 21, 2008 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on whether to grant the application or take other peremptory action. MCR 7.302(G)(1). At oral argument, the parties shall address: (1) whether the Court of Appeals erred by holding that innocent misrepresentation is not a viable theory of liability under the Seller Disclosure Act (SDA), MCL 565.951 *et seq.*; (2) if not, whether the plaintiffs could nevertheless proceed with their claim to the extent an issue presented to the jury was whether the defendants knew of the termite infestation and intentionally withheld the information from the plaintiffs; (3) whether the defendants failed to preserve the argument that a claim for innocent misrepresentation cannot legally be maintained under the SDA by failing to expressly present it at the Court of Appeals; and (4) if so, whether this failure to preserve the issue acted as a waiver of this defense or acted as a bar to the Court of Appeals consideration of the issue. The parties may file supplemental briefs within 28 days of the date of this order, but they should not submit mere restatements of their application papers.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 8, 2009

Corbin R. Davis

Clerk